

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4609 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GAURANG SHAH

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

Mr. S.N.Soparkar for MR SB VAKIL for Petitioners
SERVED for Respondent No. 1, 3, 4, 5, 6
Mr. Sen for MR GN DESAI for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/02/97

ORAL JUDGEMENT

This petition under Article 226 challenges the decision of the respondents to forfeit one month's stipend of the Resident Doctors at Sheth K.M.School of Postgraduate Studies in Medicine and Research Hospital as communicated to them under letter dated 17.10.84 of the Superintendents of the respective hospitals and the decision of the respondents to deny residency and refuse admission to PG Medical course at the aforesaid institution unless the applicants sign an undertaking in the proforma at Annexure "A" to the petition. The petitioners have also prayed for directing the respondents to refund the amount of one month's stipend forfeited as per the aforesaid decision.

2. In response to the notice, Superintendent of V.S.Hospital and Director of School of Postgraduate Studies has filed the affidavit in reply on behalf of all the respondents.

3. The learned counsel for the petitioners has contended that the decision to forfeit stipend is unconstitutional and illegal because (i) the undertaking and the conditions of appointment contained unjust terms in respect of which the petitioners had no bargaining powers (ii) the petitioners, who were residents at the aforesaid hospital, had remained absent from duty for only five days between October 17 and October 21 of 1984 and therefore, the respondents could not have forfeited one month's stipend.

4. On behalf of the respondents, it is pointed out that when the residents working at the above hospital had earlier gone on strike in the year 1983, the management of the hospital had terminated services of the residents and the said termination was challenged by Junior Doctors Association before this Court in Special Civil Application no. 3930 of 1983. Ultimately, a settlement dated August 18, 1983 was arrived at in the said petition and the same is produced at Annexure "I" to the reply affidavit. The resident doctors expressed regrets for their absence from duty and the inconvenience caused to the patients and the public. On that occasion, the amount of stipend was to be deducted only for the period of their absence from duty without adversely affecting continuity of their service, but the resident doctors gave an undertaking not to abstain from duty or withdraw from work except on leave duly sanctioned by the

competent authority and they further agreed as under:

" (3) The parties agree that if the resident doctors have any grievance, present or future, they shall apply to the Superintendent of respective hospitals in writing and under their signatures. The Superintendent would, on receipt of such application, look into the complaints and give his reply within 15 days from the date of receipt of such application. If the resident doctors are not satisfied with the decision of the Superintendent, they will be entitled to make an application to the Municipal Commissioner who would decide within 15 days from the date of receipt of such application.

(4) The resident doctors undertake not to abstain from duty or withdraw from work except on leave duly sanctioned by the competent authority.

(5) The resident doctors hereby agree and state that they will perform all the duties, including those of casualty medical officer in the event of non availability of a regular casualty medical officer, as may be assigned by the Superintendent of the respective hospitals to them from time to time.

(6) The parties agree that the corporation would be entitled to forfeit one month's stipend without notice if the terms of this settlement are not observed by the resident doctors."

This settlement was arrived at between the Junior Doctors' Association and the respondents herein and in view of the said settlement, the respondents agreed to cancel the notice of termination and permitted the resident doctors to resume duty from the date of settlement.

5 Mr. Sen, learned counsel for the respondents submitted that it was in pursuance of the aforesaid settlement that while initially granting residency and while continuing residency for each six month term, the resident doctors were required to give an undertaking to the hospital incorporating all the aforesaid four clauses of the settlement quoted hereinabove. Similarly, the petitioners no. 1 to 4 and other resident doctors had given an undertaking to the aforesaid effect and, therefore, when they went on strike and abstained from duty from October 17 to October 21, 1984 without obtaining leave from the Superintendents of the concerned hospitals, the petitioners and other

members of petitioner no. 5 association had thus committed breach of the terms of the settlement as well as individual undertakings given by them and had also violated the conditions of residency.

The learned counsel for the respondent has, therefore, strongly urged that the impugned decision to forfeit one month's stipend was perfectly legal and was also fully justified.

6. Having heard the learned counsel for the parties, I am of the view that the impugned decision of the management of the hospital was based on a written settlement which was very much presented in judicial proceedings before this Court and was acted upon for redressal of the grievances of the Junior Doctors. Hence there was no illegality on the part of the respondents in requiring the applicants for residency to give the undertaking as per Annexure "A". The Junior Doctors' Association had very much agreed in the earlier proceedings that if they had any grievance, present or future, they would apply to the Superintendents of the respective hospitals in writing and that the Superintendent would within 15 days from the date of receipt of such application, look into the complaints and give his reply. It was further agreed that if the resident doctors were not satisfied with the decision of the Superintendent, they would be entitled to make an application to the Municipal Commissioner, who would, within 15 days from the date of such application, decide the same.

Admittedly the junior doctors or their association had not availed of the above grievance redressal procedure before proceeding on strike. They had also rightly agreed not to abstain from duty or withdraw from work except on leave duly sanctioned by the competent authority and that they will perform all the duties as may be assigned by the Superintendent from time to time.

Admittedly, the junior doctors had not obtained any leave from the competent authority for remaining absent from duty. It was specifically agreed that in case of breach of terms of the said settlement, the Corporation would be entitled to forfeit one month's stipend without notice.

7. Apart from the aforesaid express terms of the settlement, individual doctors had also given individual undertakings to abide by the aforesaid terms

and the consequences for breach of any of the said terms.

8. A judicial notice can be taken of the fact that whenever doctors serving at any public hospital proceed on strike or remain on unauthorised leave, irreparable hardship and inconvenience is caused to a large number of patients and the general public at large. Recently in the case of Paschim Bengal Khet Majdoor Samiti vs. State of West Bengal, AIR 1996 SC 2426 the Hon'ble Supreme Court has held that the provisions of Article 21 confer a right to lead a healthy life and the State is bound to provide medical services to the citizens. A patient suffering from serious injuries was denied minimum medical attention in a public hospital in Calcutta and, therefore, he had to go to a private hospital and incur substantial expenditure. The Apex Court directed the State to pay damages to the victim. The Apex Court invoked the provisions of Articles 21 and 47 for rendering the above decision and held that right to lead a healthy life is a fundamental right.

If such a fundamental right is conferred upon citizens, there has to be a corresponding legal obligation on the doctors serving at public hospitals (which are owned or managed by or on behalf of Government or which receive Grant-in-Aid from public exchaquer.) to render medical services to the patients approaching such hospitals.

9. In view of the above, the contention on behalf of the petitioners that the junior doctors had remained absent from duty only for five days and therefore, the decision to forfeit one month's stipend is disproportionate cannot be accepted. The hospital Management had the power to terminate services of doctors who enmasse remained absent without leave. Instead, the Management chose to forfeit one month's stipend. The hospital was well within its rights to take recourse to the aforesaid measure not merely in implementation of the aforesaid settlement and individual undertakings but also as a part of its disciplinary jurisdiction. In the instant case, the requirement of holding an inquiry was waived by the junior doctors themselves by agreeing to the settlement and also by giving individual undertakings. Even applying the terms laid down in the case of Central Inland Water Transport Corporation Ltd. vs. B.N.Gangully AIR 1986 SC 1571 the terms of the settlement cannot be said to be unjust and unfair looking to the nature of duties of junior deoctors at public hospitals.

10. In view of the aforesaid discussion,
there is no substance in any of the contentions urged in
the petition and the petition deserves to be dismissed
and is hereby dismissed.

Rule is discharged with no order as to
costs.

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